compassed by any small measure. The knowledge diffused by these institutions of higher learning radiates far beyond the student body.

In the result I would have allowed the appeal with costs.

*Appeal dismissed with costs; certificate for two counsel; deposit to respondent against taxed costs.*

*Editorial Note:* On Friday July 9, on application of the Attorney-General the court (coram: Suffian, L.P., Raja Azlan Shah, C.J. Malaya and M. Salleh Abas, F.J.) certified that the decision given by the court fell under paragraph (a) of subsection (3) of section 74 of the Courts of Judicature Act No. 7 of 1964.

Solicitors: *Baharuddin, Bernatt, Tan & Ker.*

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## *RE* CHIEW CHIANG SENG, DECD. DECEASED;

## SIN SIAN HONG & ANOR. v. MAU YOON SWEE

**[F.C. (Wan Suleiman Ag. C.J. (Malaya), Syed Othman and Abdul Hamid F.JJ.) September 7 & July 17, 1982]**
**[Johore Bharu – Federal Court Civil Appeal No. 44 of 1981]**

*Practice & Procedure – Appeal – Application that appellants be made to give security – Whether appellants are 'nominal plaintiffs' – Rules of the High Court, 1980, Order 23, rule 1(1)(b).*

In this case the respondent had obtained judgment against the appellants with costs. The costs were taxed at $6,188.00 but the appellants had not paid the costs. The appellants were the administrators of the estate of Chiew Chiang Seng, deceased. The respondent applied for an order that the appellants be made to give security for the costs of the appeal. Reliance was placed on Order 23, rule 1(1) (b) of the Rules of the High Court, 1980.

**Held,** the appellants were not 'nominal plaintiffs' within the meaning of Order 23 rule 1(1) (b) of the Rules of the High Court, 1980, and therefore the application must be dismissed.

*Cases referred to:*

(1) *Rainbow* v. *Kittoe* [1916] 1 Ch.D. 313.

FEDERAL COURT.

*A.K. Bashir* for the appellants.

*F.H. D'Cruz* for the respondent.

*Cur. Adv. Vult.*

**Wan Suleiman Ag. C.J. (Malaya)** (delivering the Judgment of the Court): This is an application by way of Notice of Motion by the respondent in this appeal. On the 4th of March 1981 judgment with costs was delivered in his favour in the High Court, Malacca. Cost was taxed on May 5, 1981 at $6,188.00 inclusive of allocatur fees. The appellants have not paid the costs todate.

The Applicant/Respondent alleges that the appellants have no interest in the subject matter of the appeal. According to respondent they are merely nominal appellants acting as administrators of the estate of Chiew Chiang Seng @ Chew Chiang Seng, deceased. The assets of the estate of the aforesaid deceased is a claim to the land Holding No. 114, T.A. XXXV11, Malacca, the subject matter of this appeal.

The Applicant/Respondent claims that as a result of enquiries made by him he believes that there is no other asset of the estate apart from the land aforementioned. He fears that the appellants would not be able to pay the costs of the Applicant should they fail in their appeal. He therefore applies for an order that the appellants be made to give security in the sum of $30,000/– or such other sum as this Court thinks just for the costs of this appeal, and until such costs be given this appeal be stayed. Order 23 rule 1(1) (b) of the Rules of the High Court 1980 would therefore apply.

For convenience it is set out hereunder:

> '1. (1) Where, on the application of a defendant to an action or other proceeding in the High Court, it appears to the Court –
>
> (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or'.

It would therefore appear that the appellants are not nominal plaintiffs. For what a 'nominal plaintiff' is, see pages 393 and 394 of Supreme Court Practice 1979 Pt. I and *Rainbow* v. *Kittoe*(1). In the latter case the plaintiff who was an administrator, even though the letters of administration was only granted to him as the attorney of a person who was abroad and until that person obtained letters of administration, and although he was shown to be insolvent, was not ordered to give security for the defendant's costs.

We would therefore dismiss this Motion with costs.

*Motion dismissed.*

Solicitors: *Bashir & Co.; Thakurta & Low.*